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Supreme Court of the United States

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Petitioners,

vs.

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SUMMARY

I.

The Provision In Question Does Not Violate Section 8 of the Selective Training and Service Act of 1940, as amended, 50 U. S. C. App., Sec. 308.

II.

The Provision In Question Does Not Violate the National Labor Relations Act, as amended, 29 U. S. C., Sec. 141, *et seq.*

A. The Provision In Question Does Not Violate Section 157 of the Act.

B. The Provision In Question Does Not Violate Section 158 of the Act.

C. The Provision In Question is the result of collective bargaining authorized by Section 159 of the Act.

III.

The Circuit Court Has Failed to Rule on The Status of Non-veterans in Huffman's Class.

IV.

The Provision In Question Is Consistent With Sound Public Policy.

ARGUMENT

I.

The Provision in Question Does Not Violate Section 8 of The Selective Training and Service Act of 1940, as amended, 50 U. S. C. App. Sec. 308.

Both the United States Circuit Court for the Sixth Circuit and the District Court of the United States for the Western District of Kentucky have overruled Huffman's contention that the provision of the collective bargaining agreement under consideration violates the rights of veterans previously employed by Ford on the alleged grounds that such rights are protected under the Selective Training and Service Act of 1940, 50 U. S. C. App., Sec. 308 (R. 32-33).

II.

The Provision In Question Does Not Violate The National Labor Relations Act, as amended, 29 U. S. C., Sec., 141 *et seq.*

The basic question which remains is whether such provision granting seniority to veterans of World War II, who were not previously employed by Ford, equal to their terms of military service, is discriminatory and therefore invalid within the meaning of the National Labor Relations Act, as amended, 29 U. S. C., Sec. 141, *et seq.* It is our contention that for the Court to hold the seniority provision discriminatory it must find that same violates Section 157 or 158. It is our conclusion that these Sections were not violated in the instant case for the reasons hereinafter stated, and further that the said seniority provision is authorized under Section 159 of the Act.

A. The Provision In Question Does Not Violate Section 157 of the Act.

The Circuit Court has ruled that the discrimination complained of by Huffman arises under Sec. 157 of the Na-

tional Labor Relations Act, 29 U. S. C., Sec. 157 (R. 36).

Section 157 provides as follows:

> "*157. Right of employees as to organization, collective bargaining, etc.*
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158(a)(3) of this title."

Section 157 gives employees the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection. Referring to the provisions of Section 157, the Circuit Court has explained "This means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another." (R. 36). We do not agree with the Court's interpretation.

The purpose of Section 157 is to permit employees to organize, select bargaining units, and to engage (or refrain from engaging) in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. *N. L. R. B. vs. Red Arrow Freight Lines*, 180 F. 2d 585, certiorari denied, 340 U. S. 823; *N. L. R. B. vs. Thompson Products*, 162 F. 2d 287; *Nierotko vs. Social Security Board*, 149 F. 2d 273, certiorari granted, 327 U. S.

358; *N. L. R. B. vs. Century Oxford Manufacturing Corporation*, 140 F. 2d 541; certiorari denied, 323 U. S. 714; *N. L. R. B. vs. Sun Shipbuilding & Dry Dock Company*, 135 F. 2d 15. *De Bardeleben vs. N. L. R. B.*, 135 F. 2d 13; *N. L. R. B. vs. Newark Morning Ledger Co.*, 120 F. 2d 262, certiorari denied, 314 U. S. 693. The case at bar lacks any of the elements which would constitute a violation under Section 157. Nowhere in the petition is there any allegation that Huffman's rights to form, join, or assist labor organizations has been interfered with nor does he contend that there has been any interference with his rights to engage in any concerted activities for the purpose of collective bargaining or other mutual aid or protection.

B. The Provision In Question Does Not Violate Section 158 of the Act.

We now turn to Section 158 of the National Labor Relations Act, 29 U. S. C. 158, the pertinent parts of which read as follows:

> "Sec. 158. Unfair Labor Practices
>
> (a) It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title:
>
> (2) * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *
>
> * * * * * * *
>
> (b) It shall be unfair labor practice for a labor organization or its agents—

> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: * * * or (B) an employer in the selection of his representatives for the purposes of collective bargaining for the adjustment of grievances;
> (2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section * * *.

We have already shown (*supra*) that there has been no violation of Section 157. Accordingly, we shall omit consideration of Subsections 158(a)(1) and 158(b)(1) since they refer to the rights granted employees under Section 157. This Court's attention is, therefore, respectfully directed to the provisions of Subsections 158(a)(3) and 158 (b)(2).

Subsection 158(a)(3) makes it an unfair labor practice for an employer *to encourage or discourage membership in any labor organization* by discrimination in regard to hire or tenure of employment or any term or condition of employment; subsection 158(b)(2) makes it an unfair labor practice for a labor organization to cause an employer to violate the foregoing subsection. It is obvious that the purpose or effect of the seniority clause in question was not to encourage or discourage membership in any labor organization and it, therefore, does not violate subsections 158(a)(3) or 158(b)(2), or justify the finding of discrimination under these subsections.

In a sociological sense, the term "discrimination" refers most often to the various forms of inequality of treatment which are provoked by racial or religious feeling. In the law of labor relations, the term most often refers to inequality of treatment based upon the desire of employers to discourage free employee organization for collective bargaining purposes.

The National Labor Relations Act does not purport to infringe upon the traditional prerogatives of employers to select, lay off or discharge his employees. The only limitations established by the Act is that employees may not be discriminated against because of their union activitise or affiliations. *N.L.R.B. vs. Reliable Newspaper Delivery, Inc.*; 187 F. 2d 547; *N.L.R.B. vs. Sandy Hill Iron & Brass Works*, 165 F. 2d 660; *Stonewall Cotton Mills vs. N.L.R.B.*, 129 F. 2d 629, 632; *Montgomery Ward & Company vs. N.L.R.B.*, 107 F. 2d 555, 564; *Link-Belt Co. vs. N.L.R.B.*, 311 U.S. 584; *Bradford Dyeing Assn. vs. N.L.R.B.*, 310 U.S. 318; *Consolidated Edison Co. vs. N.L.R.B.* 305 U.S. 197; *Santa Cruz Fruit Packing Co. vs. N.L.R.B.*, 303 U.S. 453; *Associated Press vs. N.L.R.B.*, 301 U.S. 103; *Friedman-Harry Marks Clothing Co., Inc. vs.* N.L.R.B., 301 U.S. 58; *Fruehauf Trailer Co. vs. N.L.R.B.*, 301 U.S. 49; *Jones & Laughlin Steel Corp. vs. N.L.R.B.*, 301 U.S. 1.

There is an absence of any allegation in the petition (R. 2-9) to the effect that Ford discriminated against Huffman, or those of his class, in regard to hire or tenure of employment of any term or condition of employment "to encourage or discourage membership in any labor organization"; nor does the petition contain any allegation that UAW-CIO caused or attempted to cause Ford to discriminate against Huffman, or those of his class, in violation of Subsection 158(a)(3). It follows that neither Huffman, nor those of his class, have any statutory basis for claiming that their seniority has been impaired.

C. The Provision In Question Is the Result of Collective Bargaining Authorized By Section 159 of the Act.

Seniority rights are not vested rights. Seniority is not an "inherent" right, protected by the common law or

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This brief of The Electric Auto-Lite Company, amicus curiae, is being filed with the consent of all of the parties to this action under subparagraph 9(b) of Rule 27, of this Court.

The Electric Auto-Lite Company is one of the defendants in a similar action now pending in the United States District Court for the Northern District of

Ohio, Western Division. That action is based upon seniority provisions of a collective bargaining agreement like those under consideration in the case at bar. If the decision of the United States Court of Appeals for the Sixth Circuit is allowed to stand, the rights of thousands of the employees of The Electric Auto-Lite Company will be affected.

JURISDICTION

This Court has jurisdiction to review the case at bar by virtue of the provisions of 28 U. S. C., Sec. 1254(1).

QUESTION PRESENTED

Is a collective bargaining agreement discriminatory within the meaning of the National Labor Relations Act, as amended, if it grants seniority credits to Veterans of World War II for military service performed prior to employment providing they were not employees of any other person or company at the commencement of their military service?

STATUTES INVOLVED

National Labor Relations Act, as amended, 29 U. S. C., Sections 157, 158 and 159.

Selective Training and Service Act of 1940, as amended, 50 U. S. C. App. Sec. 308.

(See Appendix "A")

SPECIFICATION OF ERRORS

The United States Court of Appeals for the Sixth Circuit erred in the following respects:

1. In holding that the provision in the collective bargaining agreements granting seniority to veterans not previously employed by Ford is discriminatory and therefore invalid under Section 157 of the National Labor Relations Act, as amended.

2. In failing to accurately define and rule as to the status of all persons included in "Class A."

3. By failing to recognize that the seniority granted to veterans not previously employed by Ford is consistent with sound public policy.

4. In reversing the summary judgment granted by the District Court.

STATEMENT OF FACTS

On July 30, 1946 the Ford Motor Company (hereinafter referred to as "Ford") and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as "UAW-CIO") entered into a collective bargaining agreement which contained the following provisions (R. 14-15):

> "(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941 * * * "
>
> "(d) It is further understood and agreed that, rgardless of any of the foregoing, all veterans in the employee (sic) of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to

June 21, 1941, in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

Identical provisions were contained in a subsequent agreement between the same parties dated August 21, 1947 (R. 17-18). A third agreement dated September 28, 1949, preserved to all veterans then employed by Ford the seniority rights accorded them in 1946 and 1947 agreements (R. 21).

George Huffman, the respondent herein, (hereinafter referred to as "Huffman") was first employed by Ford on or about September 23, 1943 (R. 6) and thereafter became a member of UAW-CIO (R. 3). He was inducted into the military service of the United States on November 18, 1944, and was discharged therefrom on July 1, 1946 (R. 6). He was re-employed by Ford with his seniority unimpaired in accordance with the provisions of Section 8 of the Selective Training and Service Act of 1940, as amended, (50 U. S. C. App. Sec. 308) (R. 6-7).

On February 21, 1951, Huffman filed a petition in the United States District Court for the Western District of Kentucky for a declaratory judgment, "individually, and on behalf of the class (hereinafter defined and described) of which he is a member." (R. 2.) The class is described as the plaintiff and approximately 275 other employees at the Louisville, Kentucky plant whose positions on Ford's seniority roster have been allegedly lowered due to the operation of the said provisions of the collective bargaining agreement quoted above (R. 5). The class is not limited to veterans. The description in the petition of the class is comprehensive enough to include non-veterans as well as veterans. Amongst other things the prayer in the petition asked the District Court to declare the provisions of the collective bargaining agreement

quoted above null and void and to order Ford to revise its seniority roster.

Decision of District Court

Upon motions for summary judgment by Huffman (R. 10), UAW-CIO (R. 22) and Ford (R. 25) the District Court dismissed Huffman's petition (R. 26), holding as follows:

> "* * * that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the Union and is not a device of hostility to veterans. * * * that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful."

Decision of Court of Appeals

The United States Court of Appeals for the Sixth Circuit reversed the judgment of the District Court and remanded the case for further proceedings, 195 F. 2d 170 (R. 29). The majority opinion, written by Judge Allen and concurred in by Judge Hicks, held the collective bargaining agreement invalid as to Huffman and those veterans similarly situated (R. 38). Judge McAllister wrote the following dissenting opinion (R. 38):

> "I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful."